



General Services Administration
Office of General Counsel
Washington, DC 20405

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April 1, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Subject: Implementation of Section 302 of the
Telecommunications Act of 1996, Open Video
Systems, CS Docket No. 96-46.

Dear Mr. Caton:

Enclosed please find the original and eleven copies of the General Services Administration's Comments for filing in the above-referenced proceeding.

Sincerely,

Michael J. Ettner

Michael J. Ettner
Senior Assistant General Counsel
Personal Property Division

Enclosures

cc: International Transcription Service, Inc.
Larry Walke (Diskette)

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 302 of the)
Telecommunications Act of 1996)

Open Video Systems)

CS Docket No. 96-46

**COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION**

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April 1, 1996

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

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Telecommunications Act of 1996)

Open Video Systems)

CS Docket No. 96-46

**COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA"), on behalf of the Federal Executive Agencies, submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 96-99, released March 11, 1996. In this NPRM, the Commission requested comments and replies on the implementation of open video systems.

I. Introduction

The Telecommunications Act of 1996 (the "1996 Act") offers telephone companies several options for entering and competing in the video marketplace.¹ The general regulatory treatment for video programming services provided by the telephone companies

¹Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, approved February 8, 1996.

is set forth in Section 302 of the 1996 Act, which establishes a new Part V (Sections 651-653) of Title VI of the Communications Act of 1934 (the "Communications Act").² The specific entry options for telephone companies entering the video programming marketplace are set forth in Section 651, which provides that common carriers may: (1) provide video programming to subscribers through radio communication under Title III of the Communications Act;³ (2) provide transmission of video programming on a common carrier basis under Title II of the Communications Act;⁴ (3) provide video programming as a cable system under Title VI of the Communications Act;⁵ or (4) provide video programming by means of an "open video system" under new Section 653 of the Communications Act.⁶

Under an open video system ("OVS"), a telephone company can provide common carrier video transmission services for programming provided by itself and others. An OVS differs from its predecessor, a video dialtone ("VDT") system, in two significant respects. First, under an OVS system, the telephone company can provide programming as well as transmission. Second, an OVS system is regulated pursuant to Title VI, not Title II, of the Communications Act. As a necessary consequence of this latter difference, unlike VDT,

²Communications Act of 1934, 47 U.S.C. § 151 et seq.

³Id., § 651(a)(1).

⁴Id., § 651(a)(2).

⁵Id., § 651(a)(3).

⁶Id., § 651(a)(3)-(4).

OVS must be treated as unregulated for purposes of Part 64 of the Commission's rules.

**II. The Commission Should Not Require Telephone Ratepayers
To Subsidize the Provision of Video Services By LECs.**

Pursuant to Section 111(a) of the Federal Property and Administrative Services Act of 1949, as amended 40 U.S.C. 759 (a)(1), GSA is vested with the responsibility to coordinate and provide for the procurement of telecommunications services for Federal Executive Agencies. That Act also allows GSA to delegate responsibility for the procurement of services to individual agencies when there are good reasons for such delegation.⁷

GSA is thus directly or indirectly one of the largest users of telecommunications services in the nation. As a large user of telecommunications services, GSA is concerned that it will be forced to subsidize local exchange carrier ("LEC") provision of video services.

The Commission explained the LECs' incentive to cross-subsidize the predecessor of OVS, VDT, as follows:

Because video dialtone is an essential component of multichannel video service that will compete directly with cable television operators and other multichannel video programming providers, LEC's may have an incentive to understate the direct costs of the service in order to set unreasonably low prices and engage in cross-subsidization.⁸

GSA believes that the Commission must establish effective accounting safeguards to

⁷40 U.S.C. 759(b)(3).

⁸Telephone Company - Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, FCC 94-269, released November 7, 1994, para. 216.

prevent such cross-subsidization.

In comments filed last year in the Commission's Price Cap Review, GSA urged the Commission to modify its Part 64 rules to separate VDT costs from telephony costs.⁹ Although the Commission did not adopt GSA's recommendation with respect to VDT,¹⁰ the Commission states in the NPRM that it expects to initiate a separate rulemaking shortly to address "the specific cost allocation requirements of Part 64 between telephone company operations and open video system operations."¹¹

GSA commends the Commission for recognizing that OVS must be treated as unregulated pursuant to Part 64, and for its plan to address the separation of OVS costs from telephony costs in a separate proceeding. Properly modified, GSA believes that the Commission's Part 64 rules can provide an effective accounting safeguard to prevent the cross-subsidization of OVS by telephone ratepayers.

III. The Commission Should Require LECs to Classify All VDT And OVS Costs As Unregulated.

Pursuant to the Commission's VDT rules,¹² seven LECs have submitted ARMIS

⁹Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1 ("Price Cap Review"), Reply Comments of GSA, May 17, 1995, pp. 10-13.

¹⁰Price Cap Review, Second Report and Order, FCC 95-394, released September 21, 1995, para. 17.

¹¹*Id.*, fn. 82.

¹²Reporting Requirements on Video Dialtone and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services, 10 FCC Rcd 11292 (Common Carrier Bur., Sept. 29, 1995).

43-09A reports of their VDT costs through September 30, 1995. In total, these LECs reported VDT investments of over \$200 million on these reports.¹³

The 1996 Act repealed the Commission's VDT rules and policies, but did not require the termination of any VDT system that the Commission had already approved.¹⁴ Absent Commission action, therefore, LEC VDT costs not only will remain indistinguishable from interstate and intrastate telephone costs, they will not even be tracked on a subsidiary record basis.

GSA submits that the Commission must act immediately to correct this state of regulatory limbo for VDT costs. VDT costs, like OVS costs, should be treated as unregulated for purposes of the Commission's Part 64 rules. The Commission should immediately issue either a Declaratory Ruling or a Responsible Accounting Letter to ensure that both VDT and OVS costs are classified as unregulated.

In connection with the requirements for LECs seeking certification as OVS providers, the Commission asks whether an applicant should be required to represent that "it has filed or will file" the appropriate amendments to its Cost Allocation Manual ("CAM") to separate OVS costs from telephony costs.¹⁵ GSA recommends that an applicant be required to represent not only that it has filed appropriate amendments to its CAM, but also that it has classified all VDT and OVS costs incurred to date as unregulated.

¹³See ARMIS 43-09A Reports of Bell Atlantic, BellSouth Telecommunications, New England Telephone, New York Telephone, Pacific Bell, Southern New England Telephone and U S West Communications.

¹⁴1996 Act, § 302(b)(1).

¹⁵NPRM, para. 70.

IV. Conclusion

As the agency vested with the responsibility for acquiring telecommunications services on a competitive basis for use of the Federal Executive Agencies, GSA urges the Commission to require LECs to classify all VDT and OVS costs as unregulated for purposes of Part 64 of its rules.

Respectfully submitted,
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April 1, 1996

CERTIFICATE OF SERVICE

I MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 1st day of April, 1996, by hand delivery or postage paid to the following parties:

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